

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12993, of Vincent O. Farquharson, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from a retail grocery store to a retail grocery store and delicatessen, first floor, in an R-4 District on the first floor of the premises 90 O Street, N.W. (Square 617, Lot 200).

HEARING DATE: July 25, 1979
DECISION DATE: August 8, 1979

FINDINGS OF FACT:

1. At the public hearing, the Board determined that the property had been posted for only nine days, instead of the ten days normally required by Section 3.33 of the Supplemental Rules of Practice and Procedure. The Board further determined that in all other respects, notice had properly been given. Mr. Clarence Kearney, the operator of the use in the subject premises, testified that the letter concerning posting had been returned by the Post Office to the Zoning Secretariat. The Board waived the normal ten day posting requirement.
2. The subject property is located on the southeast corner of the intersection of 1st and O Streets, N.W. in an R-4 District.
3. The subject property is improved with a two story brick building. The first floor of the building is currently used as a retail grocery store, pursuant to Certificate of Occupancy No. B-105657, issued on January 19, 1978.
4. A grocery store is a use which is normally first permitted in a C-1 District. The present use is therefore a non-conforming use.
5. The operator of the present store, Mr. Clarence Kearney, proposes to prepare and sell sandwiches on the premises for consumption off the premises. There would be no seating on the premises. Such a use is considered by the Zoning Regulations Division to be a delicatessen or carry-out.

6. The application therefore seeks permission to change a non-conforming use from a retail grocery store to a retail store and delicatessen.

7. There would be no change in the physical features of the building to accommodate the proposed use. The building already contains all of the necessary equipment.

8. A delicatessen is a use permitted in a C-1 District as a matter-of-right.

9. According to the testimony of the operator the sale of sandwiches would constitute a major portion of the business.

10. Even though both the existing and proposed uses are first permitted in a C-1 District, a delicatessen represents a more intense use of the property than a grocery store. Delicatessens are likely to generate more noise, traffic and trash in the neighborhood than a grocery store.

11. As the Zoning Regulations are currently applied by the Zoning Regulations Division, a grocery store could sell pre-packaged sandwiches prepared off the premises, and the present Certificate of Occupancy for the subject site as a grocery store would allow such sales.

12. There was no report from Advisory Neighborhood Commission 5C.

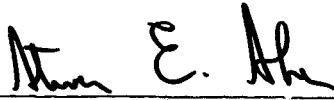
13. There was no testimony at the hearing or in the record from persons in support of or opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception to change one non-conforming use to another non-conforming use. The Board concludes that under Subsection 7104.2, the application can be granted, in that the proposed use is permitted in the most restrictive district in which the existing use is permitted. However, the Board, for the reasons stated in Finding of Fact No. 10, concludes that for other reasons the relief cannot be granted. The proposed use is more intense than the present use, would represent an expansion of a non-conforming use and would be contrary to the intent and purpose of the Zoning Regulations which are designed to minimize the effects of non-conforming uses and ultimately affect their elimination. The Board notes, additionally, that the store operator may sell pre-packaged sandwiches under the present Certificate of Occupancy, but is ORDERED by this decision not to prepare foods on the subject property for off-premise consumption. It is hereby ORDERED that the application is DENIED.

VOTE: 3-1 (Chloethiel Woodard Smith, William F. McIntosh and
Charles R. Norris to DENY, Leonard L. McCants OPPOSED).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Attested By: 
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 5 NOV 1979

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER
THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN
APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS
FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND
INSPECTIONS.